

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

**Frances Michele Reed and Lorenzo Reed
DEBTORS**

**CASE NO. 23-41809
CHAPTER 13**

**NOTICE OF HEARING AND MOTION FOR OBJECTION
TO CONFIRMATION OF CHAPTER 13 PLAN**

To: The Debtors and other entities specified in Local Rule 9013-3(a).

1. West Gate Investments, Inc. (“Secured Creditor”), by its undersigned attorney, hereby objects to Debtors proposed plan.
2. This objection is filed pursuant to 11 U.S.C. §§ 1322 and 1325, Federal Rules of Bankruptcy Procedure Rules 3015(f) and 9014, and Local Rule 3007-1. Secured Creditor requests that this Court enter an order denying confirmation of the Debtors’ Chapter 13 Plan.
3. The Court will hold a hearing on this objection at 10:00 AM, on November 30, 2023. The hearing will be conducted telephonically. Please dial 1-888-684-8852 to call in for the hearing. When prompted, enter access code: 5988550. When prompted, enter security code: 0428. Any person wanting to appear in person must contact Judge Fisher’s Courtroom Deputy at 651-848-1061 at least 48 hours prior to the hearing.
4. Any response to this objection must be filed and delivered no later than November 29, 2023, at 10:00 AM, which is 24 hours before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**
5. This Court has jurisdiction over this Motion proceeding under 28 U.S.C. §§ 157(a) and 1334, Federal Rules of Bankruptcy Procedure Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this case was filed on September 5, 2023. This case is now pending in this Court.

6. On May 24, 2001, Lorenzo Reed and Frances Reed (hereinafter "Debtor(s)'), made, executed and delivered to Safe Net Mortgage Corporation a Note (hereinafter referred to as the "Note"), in the original principal amount of \$19,735.00 bearing interest from the date thereof at the rate of 12.5% per annum until paid. A redacted copy of the Note is attached to Movant's Proof of Claim # 17.
7. On May 24, 2001, to secure the payment of the Note, Lorenzo Reed and Frances Reed, husband and wife, executed and delivered to Safe Net Mortgage Corporation a Mortgage (hereinafter the "Mortgage"), mortgaging and conveying certain real estate in Sherburne County, Minnesota, legally described as follows:

Lot 8, Block 4, Mitchell Farms 3rd Addition

which property has an address of: 5722 Egret Ave, Big Lake, MN 55309. The Mortgage was filed for record in the office of the Recorder, County of Sherburne, on November 20, 2001, as Document Number 452508. A redacted copy of the Mortgage is attached to Movant's Proof of Claim # 17.

8. The Mortgage was assigned to West Gate Investments, Inc. via the Assignment of Mortgage dated July 29, 2002. A redacted copy of the Assignment of Mortgage is attached to Movant's Proof of Claim # 17.
9. Debtors' proposed Chapter 13 Plan does not provide for the total debt payoff of the mortgage to Secured Creditor during the life of the plan. The subject Mortgage loan has matured. Secured Creditor is owed \$70,973.99 total debt.
10. In its current form, the Plan purports to modify Secured Creditor's rights under the Mortgage, contrary to the provisions of 11 U.S.C. § 1322(b)(2). As such, the Secured Creditor objects to the Plan in its current form.
11. The Plan is not made in good faith by the Debtor.
12. Secured Creditor has been forced to file this Objection to Confirmation in order to protect its interest in the collateral and requests that Debtor be required to pay the undersigned counsel reasonable attorney fees as required by the contract.

WHEREFORE, Secured Creditor prays that the Court:

1. Deny confirmation of the Plan;
2. Require Debtor to pay Secured Creditor's reasonable attorney fees and costs; and
3. For such other and further relief as the Court finds just and proper.

Dated November 20, 2023

LOGS Legal Group LLP

Signed:/s/ Tracy J. Halliday

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UNITED STATES BANKRUPTCY COURT
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MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO
CONFIRMATION OF PLAN

FACTS

This Chapter 13 case was filed by the Debtors on September 5, 2023. The Debtors listed the property in schedule A with a value of \$292,100.00. The Debtors claimed the property exempt pursuant to 11 U.S.C. § 522 (d)(1) or 11 U.S.C. § 522 (d)(5). The Debtors filed a Chapter 13 Plan on September 28, 2023, listing Secured Creditor in Part 6, Home Mortgages in Default.

ARGUMENT

1. THE DEBTOR'S PLAN CANNOT BE CONFIRMED AS PROPOSED.

Section 1322(b)(2) of the Bankruptcy Code provides as follows:

(b) Subject to subsection (a) and (c) of this Section, the plan may ---....

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence...

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due; ...

See 11 U.S.C. § 1322(b). Further, under Section 1325(a),

- (a) except as provided in subsection (b), the court shall confirm a plan if-
 - (1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;
 - (3) The plan has been proposed in good faith and not by any means forbidden by law; ...
 - (6) The debtor will be able to make all payments under the plan and to comply with the plan...

See 11 U.S.C. § 1325(a).

Secured Creditor is a secured Creditor of Debtors whose claim is secured only by the Debtors' principal residence at 5722 Egret Ave, Big Lake, MN 55309. Secured Creditor has a secured claim in the amount of \$70,973.99. [Claim # 17]. The Debtors' Plan lists Secured Creditor's claim in Part 6 with a claim in default in the amount of \$6,450.00. As filed, the Plan purports to modify Secured Creditor's right to collect all amounts due and owing under the Mortgage contract, which is contrary to the provisions of 11 U.S.C. § 1322(b)(2). As such, the Secured Creditor objects to the Plan in its current form.

CONCLUSION

Based upon the evidence before the Court and the law, Secured Creditor requests an order denying confirmation of the Debtor's proposed Chapter 13 Plan.

Dated: November 20, 2023

Respectfully submitted,
LOGS LEGAL GROUP LLP

Signed: /s/ Tracy J. Halliday
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

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CASE NO. 23-41809
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ORDER DENYING CONFIRMATION OF PLAN

The above-entitled matter came before the Court on November 30, 2023, for hearing on Debtors' proposed Chapter 13 Plan. Appearances were as noted in the record.

Based on all the files, records and arguments of counsel;

IT IS ORDERED, that confirmation of the Debtors' Chapter 13 Plan, as filed on September 28, 2023, is denied.

Dated:

BY THE COURT:

William J. Fisher
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

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DEBTORS

CASE NO. 23-41809
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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, that on November 20, 2023, I mailed U.S. Mail and CM/ECF emailed copies of the Notice of Hearing and Motion for Objection to Confirmation of Chapter 13 Plan, Memorandum Of Law In Support Of Objection To Confirmation Of Plan and Order Denying Confirmation Of Plan upon the following interested parties at their last known address:

Served Via U.S. Mail

Frances Michele Reed
5722 Egret Av
Big Lake, MN 55309

Lorenzo Reed
5722 Egret Av
Big Lake, MN 55309

Additional Copy(s) served electronically through the Court's ECF System or by first class U.S. mail postage addressed to:

Sam Calvert, Calvert Law Office PA
1011 2nd St. North
Ste107
Saint Cloud, MN 56303

Kyle L. Carlson
PO Box 519
Barnesville, MN 56514

US Trustee
1015 US Courthouse
300 S 4th Street
Minneapolis, MN 55415

/s/ Linda Wright